

Section 18. Framingham Wetlands Protection Bylaw

As amended at the April 26, 2005 Annual Town Meeting

Preamble

NO NET LOSS OF WETLANDS POLICY: There shall be no net loss of wetlands or wetland resource areas in Framingham. It is presumed that non-water dependent projects can always be designed to avoid loss of wetland areas. Projects having no feasible alternative to alteration impacts must be minimized and mitigated.

18.1 Purpose

The purpose of this bylaw is to protect the wetlands, related water resources, and adjoining land areas, and provide Open Space for passive recreation and education in the Town of Framingham by prior review and control of the activities deemed by the Conservation Commission likely to have a significant effect upon values and functions including, but not limited to, the following: public or private water supply, groundwater, storm damage prevention, flood control, erosion and sedimentation control, water pollution prevention, fisheries, wildlife, wildlife habitat, passive recreation, aesthetics, agriculture, and aquaculture (collectively, the “interests and values protected by this Bylaw”).

18.2 Jurisdiction

Except as permitted by the Conservation Commission or as provided by this bylaw, no person shall remove, fill, dredge, build upon, degrade, discharge into or otherwise alter the following resource areas, any: freshwater wetland, vernal pool, marsh, wet meadow, bog, swamp, bank, beach, flat, lake, river, pond, stream, land under said waters, land subject to flooding, Riverfront Area, or land subject to inundation by surface water during the 100 year event. Said resource areas shall be protected whether or not they border surface waters. The Commission may establish a no work/no alteration zone as appropriate to each application.

Except as otherwise provided in the bylaw, any activity to be undertaken within the Buffer Zone as defined in Section 18.9 requires the filing of an application.

18.3 Exceptions

No provision of this bylaw shall apply to: (1) activities lawfully completed prior to the effective date of this bylaw, or (2) activities subject to a negative Determination of Applicability or an Order of Conditions issued pursuant to the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40, prior to July 1, 1992.

The permit and application required by this bylaw shall not be required for maintaining, repairing, or replacing, but, not substantially enlarging or changing an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph, or other telecommunications services, provided that written notice has been given to the Commission prior to the commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by this Commission.

The permit and application required by this bylaw shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or subdivision of, provided that advance written notice has been given to the Commission, prior to the commencement of work or within twenty four (24) hours after commencement, provided that the work is performed only for the time and place agreed to by the Conservation Commission for the limited purposes necessary to abate the emergency, and provided that within 14 days of commencement of an emergency project a permit application (Abbreviated Notice of Intent or Notice of Intent) shall be filed with the Conservation Commission for review under the provisions of this bylaw. Failure to meet these and other requirements of the Conservation Commission may, after appropriate process as provided by this bylaw and applicable regulations, result in revocation

or modification of the emergency project approval and require restoration and application of mitigating measures.

The permit and application required by this bylaw shall not apply to certain “minor activities” (as defined below) in the Buffer Zone or Riverfront Area, provided that the activity is not within any other resource area:

- A. Unpaved and pervious pedestrian walkways for private use.
- B. Fencing that does not bar wildlife movement; stone walls; stakes of cordwood.
- C. Vista pruning of non-landscaped areas (pruning of landscaped area is exempt), provided that the activity is located more than fifty (50) feet from the mean annual high water line within a Riverfront Area or from Bordering Vegetated Wetland, whichever is further.
- D. Planting of native trees, shrubs, or groundcover, but no turf lawns.
- E. Conversion of lawn to uses accessory to existing single family houses (e.g. decks, sheds and gazebos) if the house existed on August 7, 1996, and provided that the activity is located more than fifty (50) feet from the mean annual high water line within a Riverfront Area or from Bordering Vegetated Wetland, whichever is further. Erosion and sedimentation controls are to be used during construction.
- F. Conversion of impervious surface to vegetated surfaces provided that erosion and sedimentation controls are used during construction.
- G. Activities that are temporary, have negligible impacts and are necessary for planning and design purposes (e.g. installation of monitoring wells, exploratory borings, sediment sampling, and surveying).

Activities not meeting the requirements for a “minor activity” as listed above in this section will continue to require a filing before the Commission and may be allowed through a Determination of Applicability or an Order of Conditions.

In the event that any of the above-listed activities are proposed within other wetland resource areas, as defined under this bylaw, such activities are NOT exempt from the permit and application requirements of the bylaw.

Other than as stated in this section the exceptions provided in the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40, will not apply.

18.4 Application for Permits and Requests for Determination

Permits: Written application shall be filed with the Conservation Commission to perform activities regulated by this bylaw affecting resource areas protected by this bylaw. The application shall include such information and plans as required by the regulations and as are deemed necessary by the Conservation Commission to describe the proposed activities and their effects on the environment. No activities shall commence without receiving a permit issued pursuant to this bylaw.

Determinations: Any person desiring to know whether or not a proposed activity and/or an area is subject to this bylaw may submit a Request for Determination to the Conservation Commission on the appropriate form. The request shall contain all necessary information, plans, data calculations, etc., as specified by the regulations.

The Conservation Commission, as it deems appropriate, may accept as the application and plans under this bylaw the Notice of Intent/Request for Determination and plans filed under the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40.

At the time of the permit application, Request for Determination, or application for Certificate of Compliance, the Applicant shall pay a filing fee according to the schedule in the associated *Framingham Wetlands Bylaw Regulations*.

This fee is not refundable. The fee is in addition to that required by the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40, and Regulations, 310 CMR 10.00. Town, county, state, and federal projects are exempt from the filing fee. The fee for an application for a modification of a permit will be the fee as calculated in the *Framingham Wetlands Bylaw Regulations*.

All fees collected pursuant to this Bylaw shall be deposited into the Conservation Commission Revolving Fund, established pursuant to M.G.L. Ch. 44, Sec. 53E ½.

Applications filed under this bylaw are to be delivered via Certified Mail, Return Receipt or hand-delivered to the Commission and shall be accompanied by the filing fee prescribed in 310 CMR 10.03(7) and in accordance with Chapter 287, Act of 1989, Section 54 Revised July 26, 1989.

18.5 Notice of Hearings

The applicant filing a request for determination or application for a permit under the provisions of this bylaw shall give written notice by Certified Mail, Return Receipt Request or by hand-delivery to all abutters within one hundred (100) feet from the property lines of the property in which the project is to occur according to the current Assessors records five (5) days in advance of the scheduled hearing in accordance with provisions of this bylaw and its regulations. The Conservation Commission is responsible for notifying the applicant and owner, if not the same, of the time and place of the scheduled hearing. Also, the Conservation Commission is responsible, for placing a notification of the subject hearing in a local newspaper at least five (5) days prior to the hearing. The Conservation Commission shall conduct a public hearing within twenty one (21) days of the receipt of a completed application for permit or request for determination unless unusual circumstances prevent this scheduling.

In this event the hearing will be scheduled at the next regularly scheduled Conservation Commission meeting having time available.

The Conservation Commission may, at its option, combine the hearing under this bylaw and the hearing conducted under the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40.

The Conservation Commission shall have the authority to continue the hearing to a specific date, agreeable to the applicant, announced at the hearing without further notification, for reasons stated at the hearing. Those reasons may include, but are not limited to, requests from other boards, officials, or attendees. In the event that the applicant objects to a continuance, the hearing will be closed and the Conservation Commission will take action on available information.

18.6 Coordination with other Boards and Departments

The Conservation Commission will notify appropriate Boards and Departments not less than ten (10) days prior to the hearing in order to allow their review of the submittal on file located in the Administrators office. Written comments from these Boards and Departments should be submitted to the Conservation Administrator at least three (3) days before the hearing. The applicant shall have the right to receive any such comments and recommendations, and to respond to them at the hearing.

18.7 Permits, Determinations, and Conditions

If the Conservation Commission after a public hearing determines that the activities which are the subject of the application are likely to have a significant or cumulative effect upon the wetland values protected by this bylaw, the Conservation Commission, within twenty one (21) days of the close of the hearing, unless unusual circumstances prevent it, shall issue or deny a permit for the activities requested. Determinations of Applicability will be issued within 21 days of receipt of the request. If the Conservation Commission issues a permit, conditions shall be imposed which are deemed necessary to protect the "interests and values", and all activities shall be performed in accordance with those conditions. The Conservation Commission is empowered to deny a permit for failure to meet the requirements of this bylaw; for failure to submit necessary information and plans requested by the Conservation Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the wetland values protected by this bylaw; and where no conditions are adequate to protect those values.

A permit shall expire three years from the date of issuance. The Conservation Commission may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Conservation Commission. Any permit may be renewed once for an additional one year period, provided that a request for renewal is received in writing by the Conservation Commission thirty days prior to expiration. The Conservation Commission, for good cause, may revoke or modify a permit issued under this bylaw after notice to the holder of the permit, notice to the public, abutters, and town boards pursuant to the preceding section 5, and a public hearing.

The Conservation Commission in an appropriate case may combine the permit or other action on an application issued under this bylaw with the Order of Conditions issued under the Massachusetts Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40.

The Commission may deny the request for an extension and require the filing of a new permit request under the following circumstances: no work has begun on the project, except where such failure is due to unavoidable delays, such as appeals, or obtaining other necessary permits; new information has become available and indicates that the Order is not adequate to protect the interests covered by this bylaw.

No work proposed in any permit application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the registry of deeds or, if the land affected thereby be registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies in writing to the Commission that the permit has been recorded.

18.8 Regulations

After public notice and public hearing the Conservation Commission shall promulgate rules and regulations to effectuate the purposes of this bylaw. Failure of the Conservation Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw.

18.9 Definitions

Except as specifically provided by these Regulations and the bylaw, terms used in the regulations and the bylaw have the meanings defined in the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40, ("The Act") and in Regulations currently codified at 310 CMR 10.00, issued pursuant to the Act by the Department of Environmental Protection, as amended November 10, 1989.

The following definitions shall apply in the interpretation and implementation of this bylaw.

Abutter means the same as the owner of land abutting the activity.

Act means the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40.

Activity means any form of draining, dumping, dredging, damming, discharging, excavating, filling or grading; the erection, reconstruction or expansion of any buildings or structures; the driving of pilings; the construction or improvement of roads and other ways; the changing of run-off characteristics; the intercepting or diverging of ground or surface water; the installation of drainage, sewage and water systems; the discharging of pollutants; the destruction of plant life; and any other changing of the physical characteristics of land.

Aggrieved means the same as persons aggrieved.

Agriculture

- A. Land in agricultural use means land presently and primarily used in the raising of animals including, but not limited to, dairy cattle, beef cattle, poultry, sheep, swine, horses, ponies, mules, goats, bees and fur-bearing animals, or land presently and primarily used in a related manner which is incidental thereto and represents a customary and necessary use in raising such animals.

Additionally, land in agricultural use means land presently and primarily used in the raising of fruits, vegetables, berries, nuts and other foods for human consumption, feed for animals, tobacco, flowers, sod, trees, nursery or greenhouse products, and ornamental plants and shrubs; or land presently and primarily used in raising forest products under a planned program to improve the quantity and quality of a continuous crop; or land presently and primarily used in a related manner which is incidental thereto and represents a customary and necessary use in raising such products.

Land in agricultural use may lie fallow for a period of time if it has been used for agriculture at least three (3) of the five (5) immediately preceding years.

B. Normal maintenance or improvement of land in agricultural use means the following activities:

1. All tilling and harvesting practices customarily employed to enhance existing growing conditions
2. The pasturing of animals, including the construction and maintenance of such fences as may be required;
3. The use of fertilizers, pesticides, herbicides, and other materials, subject to all state and federal laws and regulations governing their use;
4. The constructing, grading or restoring of field ditches, subsurface drains, grass waterways, vents, access roads, farm ponds and similar projects to improve drainage, prevent erosion, provide more effective uses of rainfall and improve equipment operation and efficiency, all in order to improve conditions for the growing of existing crops or raising of animals;
5. The cultivation of cranberries, including the following practices:
 - a. sanding operations using existing sand pits;
 - b. cleaning of cross ditches, canals and natural waterways;
 - c. repair and replacement but not enlargement of water control structures, including flumes, pumps, dikes, and piping above and below ground;
 - d. repair, replacement and regrading of existing cranberry bogs, and
 - e. repair and cleaning of reservoirs, dams and water storage systems within the limits of existing water rights.

All maintenance and improvement activities shall be undertaken in such a manner as to prevent erosion and siltation of adjacent water bodies and wetlands, as specified by the U.S.D.A. Soil Conservation Service "Guidelines for Soil and Water Conservation".

6. The cutting and removal of trees for the purpose of selling said trees or any products derived therefrom, when carried out in the following manner:
 - a. Every reasonable effort shall be made to avoid or minimize access through Areas Subject to Protection Under the Act;
 - b. Where access through Areas Subject to Protection Under the Act is necessary, every reasonable effort shall be made to gain said access without constructing new access ways including, but not limited to, maintaining and improving (but not substantially enlarging) existing accessways, and operations shall be conducted when the soil is frozen, dry or otherwise stable;
 - c. Where access is determined impracticable without constructing new accessways, said accessways shall be designed, constructed and maintained in accordance with U.S. Forest Service logging road standards, and shall be

removed and the site returned to previously existing conditions within one (1) year;

- d. All channel crossings shall be stabilized to prevent erosion, using standard U.S. Forest Service methods. When crossings involve fill or other closed or semi-closed structures which will obstruct flow, they shall be designed, constructed and maintained in accordance with U.S. Forest Service standards, shall allow unobstructed passage of the existing flows for at least the 10-year storm, and shall be removed and the site returned to existing conditions within one (1) year of construction;
 - e. All soils which are exposed during and after work shall be stabilized to prevent said soils from eroding into open water bodies, in accordance with standard U.S. Forest Service methods;
 - f. All operations shall be conducted in accordance with a cutting plan approved by the Massachusetts Department of Environmental Management District Forester; and
 - g. A written notice describing the proposed cutting and removal of trees shall be submitted to the Conservation Commission not less than ten (10) days prior to the commencement of operations.
7. The selective cutting of trees by owners for their own use, when carried out in the following manner:
- a. No more than 25,000 board feet or 50 cords shall be harvested;
 - b. After the cutting, the crown area of the remaining trees shall be evenly distributed throughout the site and shall cover no less than 50 percent of the surface area of the site;
 - c. The removal of the selectively cut trees shall occur only during those periods when the ground is sufficiently frozen, dry otherwise stable to support the equipment used;
 - d. The cutting, removal or other destruction of trees and the understory vegetation shall not occur within twenty-five (25) feet of the bank of a water body;
 - e. The placement of slash, branches and limbs resulting from the cutting and removal operations shall not occur within twenty-five (25) feet of the bank of a water body; and
 - f. there shall occur no filling, excavation or other change in the existing topography.

Alter means to change the condition of any Area Subject to Protection Under the Act. Examples of alterations include, but are not limited to, the following:

- A. the changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns and flood retention areas;
- B. the lowering of water level or water table;
- C. the destruction of vegetation;
- D. the changing of water temperature, biochemical oxygen demand (BOD), and other physical, biological or chemical characteristics of the receiving water;

Provided that when provisions of 310 CMR 10.03(6) and 10.05(3) or 333 CMR 11.03(9) have been met, the application of herbicides in the Buffer Zone in accordance with such plans as are required by the Department of Food and Agriculture pursuant to its rights of way management

regulations, 333 CMR 11.00 effective July 10, 1987, is not an alteration of any area Subject to Protection Under the Act.

Aquaculture

- A. Land in aquacultural use means land presently and primarily used in the growing of aquatic organisms under controlled conditions, including one or more of the following uses: raising, breeding or producing a specified type of animal or vegetable life including, but not limited to, finfish such as carp, catfish, black bass, flatfishes, herring, salmon, shad, smelt, sturgeon, striped bass, sunfishes, trout, whitefish, eel, tilapia; shellfish such as shrimp, crabs, lobster, crayfish, oyster, clams, periwinkles, scallops, mussels, squid; amphibians such as frogs; reptiles such as turtles; seaweeds such as Irish moss and dulse; and edible freshwater plants.
- B. Normal maintenance or improvement of land in aquacultural use means the following activities, when done in connection with the production of aquatic organisms as defined above; draining, flooding, heating/cooling, removing, filling, grading, compacting, raking, tilling, fertilizing, seeding, harvesting, filtering, rafting, culverting or applying chemicals in conformance with all state and federal laws; provided, however, that such activities are clearly intended to improve and maintain land in aquacultural use and that best available measures are utilized to ensure that there will be no adverse effect on wetlands outside the area in aquacultural use, and further provided that removing, filling, dredging or altering of a salt marsh is not to be considered normal maintenance or improvement of land in aquacultural use.

Area subject to Protection under the Act means any area specified in 310 CMR 10.02(1). It is used synonymously with Resource Area, each one of which is defined in greater detail in Parts II and III of 310 CMR 10.00.

Bank (inland) is defined in Part III, 310 CMR 10.54(2).

Beach (inland): a naturally occurring inland beach means an unvegetated bank as defined in Part III CMR 10.54(2).

Best Available Measures means the most up-to-date technology or the best designs, measures or engineering practices that have been developed and that are commercially available.

Best Practical Measures means technologies, designs, measure or engineering practices that are in general use to protect similar interests.

Bordering means touching. An area listed in 310 CMR 10.02(1)(a) is bordering on a water body listed in 310 CMR 10.02(1)(a) if some portion of the area is found in the appropriate section of 310 CMR 10.02(1)(a) some portion of which is in turn touching the water body.

Bordering Vegetated Wetland is defined in Part III, 310 CMR 10.55(2).

Boundary means the boundary of an Area Subject to Protection Under the Act. A description of the boundary of each area is found in the appropriate section of 310 CRM 10.00. For inland areas, see Part III of 310 CMR 10.00.

Breeding Areas means areas used by wildlife for courtship, mating, nesting or other reproductive activity, and rearing of young.

Buffer Zone means that area of land extending one hundred twenty five (125) feet horizontally outward from the boundary of any resource area specified in this Bylaw (Para. 18.2). Certificate of Compliance means a written documentation by the issuing authority that work or a portion thereof has been completed in accordance with an Order. It shall be made on Form 8 of 310 CMR 10.99, modified to reference this Bylaw or on a form designed under this Bylaw.

Commissioner means the Commissioner of the Department of Environmental Protection, pursuant to St. 1989, c. 240, s.101.

Conditions means those requirements set forth in a written Order issued by the Conservation Commission for the purpose of permitting, regulating or prohibiting any activity that removes, fills, dredges or alters an Area Subject to Protection Under this Bylaw.

Conservation Commission means that body comprised of members lawfully appointed pursuant to M.G.L. Ch. 40, Sec. 8C. For the purposes of the Act and 310 CMR 10.00, it shall also mean a mayor or board of selectmen, where no conservation commission has been established under said M.G.L. Ch. 40, Sec. 8C.

Creek means the same as a stream, as defined in this section.

Date of Issuance means the date an Order is mailed, as evidenced by a postmark, or the date it is hand-delivered.

Date of Receipt means the date of delivery to an office, home or usual place of business by mail or hand-delivery.

Department means the Department of Environmental Protection, and shall include the Commissioner and any other person employed by said Department, pursuant to St. 1989, c. 240, s. 101.

Determination

- A. Determination of Applicability means a written finding by a Conservation Commission as to whether a site or the work proposed thereon is subject to the jurisdiction of this Bylaw. It shall be made on Form 2 of 310 CMR 10.99, modified to reference this Bylaw or on a form designed under this Bylaw.
- B. Determination of Significance means a written finding by a Conservation Commission, after a public hearing, that the area on which the proposed work is to be done, or which the proposed work will alter, is significant to one or more interests identified in this Bylaw. It shall be made as part of the Order, on Form 5 of 310 CMR 10.99, modified to reference this Bylaw or on a form designed under this Bylaw.
- C. Notification of Non-Significance means a written finding by a conservation commission, after a public hearing, that the area on which the proposed work is to be done, or which the proposed work will alter, is not significant to any interests of this Bylaw. It shall be made as part of the Order, on Form 6 of 310 CMR 10.99, modified to reference this Bylaw or on a form designed under this Bylaw.

Dredge means to deepen, widen or excavate, either temporarily or permanently.

Extension Permit means a written extension of time within which the authorized work shall be completed. It shall be made on Form 7 of 310 CMR 10.99, modified to reference this Bylaw or on a form designed under this Bylaw.

Fill means to deposit any material so as to raise an elevation, either temporarily or permanently.

Final Order means the Order issued by the Commissioner after an adjudicatory hearing or, if no request for hearing has been filed, the Superseding Order or, if no request for a Superseding Order has been filed, the Order of Conditions.

Flood Control means the prevention or reduction of flooding and flood damage.

Freshwater Wetlands shall mean wet meadows, marshes, swamps, bogs, areas where around water, flowing or standing surface water or ice provide a significant part of the supporting substrate for a plant community for at least five months of the year; emergent and submergent plant communities in inland waters; that portion of any bank which touches any inland waters.

General Performance Standards means those requirements established by Regulations promulgated under this Bylaw for activities in or affecting each of the Areas Subject to Protection Under this Bylaw.

Ground Water Supply means water below the earth's surface in the zone of saturation.

Important Wildlife Habitat Functions mean important food, shelter, migratory or overwintering area, or breeding areas for wildlife.

Interests Identified in this Bylaw means public or private water supply, ground water supply, flood control, storm damage prevention, prevention of pollution, erosion control and sedimentation control, protection of wildlife, protection of wildlife habitat, passive recreation, aesthetics, agriculture, and aquaculture, protection of fisheries, and protection of wildlife habitat.

Issuing Authority means the Framingham Conservation Commission.

Lake means an open body of fresh water with a surface area of ten (10) acres or more, and shall include great ponds.

Land subject to flooding is defined in Part III, 310 CMR 10.57(2).

Land Under Water Bodies and Waterways means the bottom of, or land under, the surface of a creek, river, stream, pond, or lake. Land under inland water bodies is further defined in Part III 310 CMR 10.562).

Lot means an area of land in one ownership, with definite borders.

Majority means more than half of the members of the Conservation Commission then in office.

Marsh is defined in M.G.L. Ch. 131, Sec. 40, para. 10.

Meadow (or wet meadow) is defined in M.G.L. Ch. 131, Sec. 40, para. 9.

MEPA means the Massachusetts Environmental Policy Act, M.G.L. Ch. 30, ss. 6-62H, and the regulations promulgated pursuant thereto, 301 CMR 11.00 et seq.

Migratory Areas means those areas used by wildlife moving from one habitat to another, whether seasonally or otherwise.

Notice of Intent means the written notice filed by any person intending to remove, fill, dredge, or alter an area subject to Protection Under this Bylaw. It shall be made on Form 3 or 4 of 310 CMR 10.99, modified to reference this Bylaw or on a form designed under this Bylaw.

Order means an Order of Conditions or Amended Order of Conditions.

Order of Conditions means the document issued by a conservation commission containing conditions which regulate or prohibit an activity. It shall be made on Form 5, 310 CMR 10.99, modified to reference this Bylaw or on a form designed under this Bylaw.

Owner of Land Abutting the Activity means the owner of land sharing a common boundary or corner with the site of the proposed activity in any direction, including land located directly across the street, way, creek, river, stream, brook or canal.

Party to any proceeding before the Commission means the applicant, and pursuant to 310 CMR 10.05(7)(a) may include the owner of the site, any abutter, any person aggrieved, any ten (1) residents of the city or town where the land is located and any ten (10) persons pursuant to M.G.L. Ch. 30A, Sec. 10A.

Person Aggrieved means any person who, because of an act or failure to act by the issuing authority, may suffer an injury in fact which is different either in kind or magnitude from that suffered by the general public and which is within the scope of interests identified in the Bylaw.

Plans mean such data, maps, engineering drawings, calculations, specification, schedules and other materials, if any, deemed necessary by the issuing authority to describe the site and/or the work, to determine the applicability of the Bylaw or to determine the impact of the proposed work upon the interests identified in the Bylaw.

Pond (inland) means any open body of fresh water, either naturally occurring or man-made by impoundment, with surface area observed or recorded within the last ten (10) years of at least 10,000 square feet, and which is never without standing water due to natural causes, except during periods of extended drought. For purposes of this definition, extended drought shall mean any

period of four (4) or more months during which the average rainfall for each month is 50 percent or less of the ten (10) years average for that same month. Basins or lagoons which are part of wastewater treatment plants shall not be considered ponds, nor shall swimming pools or other impervious man-made retention basins.

Prevention of Pollution means the prevention or reduction of contamination of surface or ground water.

Private Water Supply means any source or volume of surface or ground water demonstrated to be in any private use or demonstrated to have a potential for private use.

Protection of Fisheries means protection of the capacity of an Area Subject to Protection Under this Bylaw:

- A. To prevent or reduce contamination or damage to fish; and
- B. To serve as their habitat and nutrient source. Fish includes all species of fresh fish.

Protection of Land Containing Shellfish means protection of the capacity of an Area Subject to Protection under the Act:

- A. To prevent or reduce contamination or damage to shellfish; and
- B. To serve as their habitat and nutrient source.

Public Water Supply means any source or volume of surface or ground water demonstrated to be in public use or approved for water supply pursuant to M.G.L. Ch. 111, Sec. 160 by the Division of Water Supply of the Department, or demonstrated to have a potential for public use.

Rare Species means those vertebrate and invertebrate animal species officially listed as endangered, threatened, or of special concern by the Massachusetts Division of Fisheries and Wildlife under 321 CMR 8.00.

Remove means to take away any type of material, thereby changing an elevation, either temporarily or permanently.

Request for Determination of Applicability means a written request made by any person to a conservation commission or the Department for a determination as to whether a site or work thereon is subject to the Act. It shall be submitted on Form 1 of 310 CMR 10.99, modified to reference this Bylaw or on a form designed under this Bylaw.

Resource Area means any of the areas specified in this Bylaw. It is used synonymously with Area Subject to Protection Under this Bylaw, each one of which is enumerated in Para. 18.2, Jurisdiction.

River means a natural flowing body of water that empties to any ocean, lake or other river and which flows throughout the year.

Riverfront Area is the area of land between a river's mean annual high water line and a parallel line measured horizontally for 200 feet on both sides of the River. The Riverfront area may include or overlap other resource areas or their buffer zones.

Shelter means protection from the elements or predators.

Significant means plays a role. A resource area is significant to an interest identified in the Act when it plays a role in the provision or protection, as appropriate, of that interest.

State-listed Species means the same as rare species, as defined in this section.

Storm Damage Prevention means the prevention of damage caused by water from storms including, but not limited to, erosion and sedimentation, damage to vegetation, property or buildings, or damage caused by flooding, water-borne debris or water-borne ice.

Stream means a body of water, including brooks and creeks, which move in a definite channel in the ground due to hydraulic gradient, and which flows within, into or out of an Area Subject to

Protection Under the Act. A portion of a stream may flow through a culvert or beneath a bridge. Such a body of running water which does not flow throughout the year (i.e., which is intermittent) is a stream except for that portion upgradient of all bogs, swamps, wet meadows and marshes.

Superseding Order means a document issued by the Department containing conditions which regulate or prohibit an activity. It shall be made on Form 5 of 310 CMR 10.99.

Swamp is defined in M.G.L. Ch. 131, Sec. 40, para. 8.

Vernal Pool Habitat means confined basin depressions which, at least in most years, hold water for a minimum of two continuous months, and which are free of adult fish populations, as well as the area within 125 feet of the mean annual boundaries of such depressions. These areas are essential breeding habitat, and provide other extremely important wildlife habitat functions during non-breeding season as well, for a variety of amphibian species such as wood frog (*Rana sylvatica*) and the spotted salamander (*Ambystoma maculatum*), and are important habitat for other wildlife species.

Water-dependent uses means those uses and facilities which require direct access to, or location in inland waters and which therefore cannot be located away from said waters, including but not limited to: marinas, public recreational uses, navigational and commercial fishing and boating facilities, water-based recreational uses, navigation aids, basins, channels, industrial uses dependent on waterborne transportation or requiring large volumes of cooling or process water which cannot reasonably be located or operated at an upland site, crossing over or under water bodies or waterways (but limited to railroad and public roadway bridges, tunnels, culverts, as well as railroad tracks and public roadways connecting thereto which are generally perpendicular to the water body or waterway), and any other uses and facilities as may further hereafter be defined as water-dependent in 310 CMR 9.00.

Wildlife means all mammals, birds, reptiles and amphibians and, for the purposes of 310 CMR 10.37 and 10.59, all vertebrate and invertebrate animal species which are officially listed by the Massachusetts Division of Fisheries and Wildlife under 321 CMR 8.00 as endangered, threatened, or of special concern.

Wildlife habitat is defined in paragraph 13 of the Act.

Work means the same as activity.

18.10 Security

As part of a permit issued under this bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Conservation Commission may require that the performance and observation of the conditions imposed hereunder be secured wholly or in part by one or more of the methods described below:

- A. By a proper bond or deposit of money or other negotiable securities or other undertaking of financial responsibility sufficient in the opinion of the Conservation Commission;
- B. By a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the Town of Framingham whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

18.11 Enforcement

The Conservation Commission, its agents, officers, and employees shall, after proper notification to the owner, have authority to enter upon privately owned land for the purpose of performing their duties under this bylaw and may make or cause to be made such examinations, surveys or sampling as the Conservation Commission deems necessary.

The Conservation Commission shall have the authority to enforce this bylaw, its regulation, and permits issued thereunder by violation notices, administrative order, and civil and criminal court actions. Upon request of the Conservation Commission, the Board of Selectmen and the Town

Counsel shall take legal action for enforcement under civil law. Upon request of the Conservation Commission, the Chief of Police shall take legal action for enforcement under criminal law.

Municipal board and officers, including any police officer or other officers having police powers, shall have the authority to assist the Conservation Commission in enforcement.

Any person who violates any provision of this bylaw, or permits issued thereunder, shall be punished by a fine of not more than \$300.00 each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the bylaw, or permit violated shall constitute a separate offense. As the alternative to criminal prosecution, the Conservation Commission may elect to utilize the non-criminal disposition procedure set forth in M.G.L. Ch. 40, Sec. 21D.

18.12 Burden of Proof

The applicant for a permit shall have the burden of proof by a preponderance of credible evidence that the work proposed in the application will not have a significant effect upon the wetland values protected by this bylaw. Failure to provide adequate evidence to the Conservation Commission supporting this burden shall be sufficient cause for the Conservation Commission to deny a permit or grant a permit with conditions.

18.13 Relation to the Wetlands Protection Act

This bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40, and regulations thereunder.

18.14 Appeals

A decision of the Conservation Commission is reviewable in Superior Court in accordance with M.G.L. Ch. 249, Sec. 4.